

PETITION TO:
UNITED NATIONS
WORKING GROUP ON ARBITRARY DETENTION

Chair-Rapporteur: Dr. Miriam Estrada-Castillo (Ecuador)
Vice-Chair: Mr. Mumba Malila (Zambia)
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HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY

In the Matter of
Igor Losik,
(Citizen of Belarus)

v.

Government of the Republic of Belarus

PETITION FOR OPINION

Pursuant to Human Rights Council Resolutions
1991/42, 1994/32, 1997/50, 2000/36, 2003/31, 2006/102, 6/4, and 24/7

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January 27, 2023

QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION

I. IDENTITY

1. *Family Name:* Losik
2. *First Name:* Igor (or Ihar)
3. *Sex:* Male
4. *Age at the Time of Detention:* 27
5. *Nationality:* Belarusian
6. (a) *Identity document (if any):* Unknown
(b) *Place of Issue:* N/A
(c) *On (date):* N/A
(d) *No.:* N/A
7. *Profession and/or activity (if believed to be relevant to the arrest/detention):* Belarusian activist, blogger, and consultant of the Belarusian section of RFE/RL
8. *Address of usual residence:* Unknown

II. ARREST

1. *Date of arrest:* June 25, 2020
2. *Place of arrest (as detailed as possible):* Mr. Losik's apartment in Baranavichy, Belarus
3. *Did they show a warrant or other decision by a public authority?* No arrest warrant was produced, only a search warrant.
4. *Authority who issued the warrant or decision:* Government of Republic of Belarus¹
5. *Relevant legislation applied (if known):* None

III. DETENTION

1. *Date of detention:* June 25, 2020

¹ Amnesty International. 2020. Belarus: Bloggers and activists arrested in purge ahead of the presidential election must be released. [online] Available at <<https://www.amnesty.org/en/latest/news/2020/06/belarus-bloggers-and-activists-arrested-in-purge-ahead-of-the-presidential-election-must-be-released/>> [Accessed 8 December 2022].

2. *Duration of detention (if not known, probable duration)*: From June 2020 continuing to the time of submission
3. *Forces holding the detainee under custody*: Government of Republic of Belarus
4. *Places of detention (indicate any transfer and present place of detention)*: On August 18, 2020, Mr. Losik was transferred to the pre-trial detention center in Zhodzino. On a date unknown to Mr. Losik’s international counsel, he was transferred to the Homel pre-trial prison. Following the Supreme Court decision on June 1, 2022, Mr. Losik was transferred from Homel to Novopolotsk IK No. 1, a high-level security correctional colony, where he is currently held and where he is expected to serve the remainder of his sentence.
5. *Authorities that ordered the detention*: Government of Republic of Belarus and the Belarusian Supreme Court²
6. *Reasons for the detention imputed by the authorities*: Authorities allege that Mr. Losik used the Telegram channel “Belarus of the Brain” to disrupt public order ahead of the presidential election on August 9, 2020.
7. *Relevant legislation applied (if known)*: Article 342 of the Criminal Code of the Republic of Belarus “organization of actions that grossly violate public order.” Article 293 “organization of mass disturbances”, Articles 130 “incitement to racial, national or religious hatred or discord” and Article 138 “Illegal use of signs protected by international treaties” the former being considered a war crime. Final Charges were brought pursuant to Articles 293 and 130.

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

1. Statement of Facts

Part A of this Statement of Facts details the current political climate in Belarus to illustrate the Government’s pattern of violating its citizens substantive and procedural rights, particularly as it refers to journalists. Part B offers background information on Igor Losik and “Belarus of the Brain”. Part C describes the circumstances surrounding Igor Losik’s arrest and continuing detention.

A. Belarus’ Pattern of Political Repression and Human Right Abuses

Civil liberties and rights have become subject to severe restrictions in Belarus under Alyaksandr Lukashenka’s presidency.³ While the Belarusian Constitution provides for separation of powers and presidential term limits, Lukashenka has consolidated his rule over all governmental

² Radio Free Europe/Radio Liberty. 2022. Belarusian Supreme Court Upholds Harsh Sentences For Tsikhanouski, Losik, Four Others. [Online] Available at: <<https://www.rferl.org/a/belarus-tsikhanouski-losik-sentences/31878851.html>> [Accessed 8 December 2022]. See *Four critical bloggers charged in Tsikhanouski case*. [online] Available at: <<https://spring96.org/en/news/97867>> [Accessed 8 December 2022].

³ U.S Department of State. 2021. *Belarus 2021 Human Rights Report*. [online] Available at: <<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/belarus>> [Accessed 8 December 2022].

institutions and has remained in power for the past 30 years.⁴ During his presidency, the Belarusian government has been accused of inflicting serious restrictions on free expression and media, including violence or threats of violence against journalists, unjustified arrest of prosecutions of members of the press, and upholding a wide set of censorship laws.⁵

Censorship and violence towards members of the press has become more prevalent in Belarus following the August 9, 2020 presidential election, when Lukashenko declared victory in spite of significant concerns that the electoral process had not been fair or free.⁶ According to the Belarusian Association of Journalists, between August and September of 2020, more than 60 journalists were gravely injured, 500 were detained and collectively spent more than 1,200 days in jail under dire conditions.⁷ All media sites became subject to function only upon government approval of its media status, a measure that has been toughened in recent months.⁸ Most recently, the majority of media outlets, including TUT and RFE/RL have been labeled as “extremist” organizations and have been outlawed from legally functioning in Belarus. Sharing, commenting or being in physical or digital possession of articles published by any of these organizations is a strict liability crime.⁹ According to data published by Reporters without Borders, Belarus currently ranks 158 out of 180 countries, where 1 is the freest.¹⁰

As a result of the extreme censorship of free press, Belarusian journalists have resorted to use alternative social media platforms such as YouTube and Telegram to share and gather news.¹¹ Telegram is a messaging app where users can send messages, photos, videos, and files of any size as well as create groups for up to 200,000 people or channels for broadcasting to unlimited audiences. This platform has become the primary source of information for the majority of Belarusians.¹² However, as a response to Telegram’s wide reception, the Belarusian government has labeled all Telegram channels that are not administered or managed by the government as “extremist” sources, and similar to its media restrictions, all participation related to these sites, including sharing, commenting, liking a post or even visiting the websites is considered a strict liability crime.¹³

⁴ Amnesty International. 2020. Belarus: a criminal case involves a growing number of the regime’s critics. [online] Available at: <<https://www.amnesty.org/en/documents/eur49/2814/2020/en/>> [Accessed 8 December 2022].

⁵ Belarusian Association of Journalists. 2021. “*Mass Media in Belarus*” *Monitoring Report 2021*. [online] Available at: <<https://baj.by/en/analytics/e-newsletter-mass-media-belarus-monitoring-report-2021>> [Accessed 8 December 2022].

⁶ Voice of America. 2022. *Belarus Media Is Under ‘Wave of Repression’*. [online] Available at: <<https://www.voanews.com/a/press-freedom-belarus-media-under-wave-repression/6205425.html>> [Accessed 8 December 2022].

⁷ Id. See also Belarusian Association of Journalists. 2021. “*Mass Media in Belarus*” *Monitoring Report 2021*. [online] Available at: <<https://baj.by/en/analytics/e-newsletter-mass-media-belarus-monitoring-report-2021>> [Accessed 8 December 2022].

⁸ U.S Department of State. 2021. Belarus 2021 Human Rights Report. [online] Available at: <<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/belarus>> [Accessed 8 December 2022].

⁹ Source on file with author. Interview with anonymous source. See also DW. 2021. Belarus labels Radio Liberty as extremist. [online] Available at: <<https://www.dw.com/en/belarus-labels-broadcaster-radio-liberty-as-extremist/a-60246554>> [Accessed 27 January 2023].

¹⁰ Reporters without Borders. 2022. [online] Available at:

<https://rsf.org/en/barometer?exaction_pays_pays=164&exaction_pays_annee=2022#exaction-pays> [Accessed 8 December 2022].

¹¹ <https://www.codastory.com/authoritarian-tech/belarus-protests-telegram/> Minister of the Interior Yury Karayeu said in his June 25 address to the Belarusian Parliament’s lower chamber that the recent protests were organized and coordinated through YouTube livestreams and Telegram channels. He also mentioned RFE/RL’s coverage of the June 18 demonstration in Minsk as an example. See *Four critical bloggers charged in Tsikhonouski case*. [online] Available at: <<https://spring96.org/en/news/97867>> [Accessed 8 December 2022].

¹² Id.

¹³ Source on file with author. Interview with anonymous source. See also Radio Free Europe Radio Liberty. 2021. Seven Years In Prison For Following A Telegram Channel? Some Belarusians Are Unsubscribing, Just In Case. [online] Available at: <https://www.rferl.org/a/belarus-telegram-extremist-subscribers/31511257.html> [Accessed 27 January 2023]. See also Global Voices. 2021. In Belarus, subscribing to Telegram channels branded as ‘extremist’ may now get users in trouble. [online] Available at: <https://globalvoices.org/2021/10/15/in-belarus-subscribing-to-telegram-channels-branded-as-extremist-may-now-get-users-in-trouble/> [Accessed 27 January 2023].

B. Background Information on “Belarus of the Brain” and Igor Losik

Igor Alyksandravich Losik (or Ihar Losik) is a Belarusian activist, blogger, and consultant of the Belarusian section of RFE/RL, a non-profit news network.¹⁴ Before his arrest, Mr. Losik was the co-founder and main administrator of “Belarus of the Brain.” “Belarus of the Brain” or “Belanova” is a Telegram channel, founded in 2016, with the intent to create a news platform accessible to all Belarusians.¹⁵ Prior to the presidential election in August 2020, “Belarus of the Brain” became the main media outlet used by Belarusian oppositionists. During the protests of August 2020, more than 170,000 people were subscribed to Belarus of the Brain.¹⁶ Currently, Belarus of the Brain is the second-most read channel in the country. Since its foundation, Mr. Losik actively participated on the channel covering and reporting on the human rights violations committed by the Belarusian government. In the lead up to the presidential election of August 2020, Mr. Losik continued to cover these topics in addition to giving coverage to the opposition candidate, Sviatlana Tsikhanouskaya.¹⁷

Prior to his involvement with “Belarus of the Brain,” Mr. Losik led peaceful and silent protests through the “Revolution through Social Networks” movement in 2011.¹⁸ Though he officially terminated his association and participation in the administration of the group, government officers opened an unofficial ongoing passive investigation on Mr. Losik.¹⁹

C. Igor Losik’s arrest and continuing detention

1. Arrest

On June 25, 2020, Mr. Losik was arrested in his home in Baranavichy and accused of using the Telegram channel “Belarus of the Brain” to “disrupt public order” ahead of the presidential election on August 9, 2020. The arrest came several hours after a two hour-long search where 15 officers of the Militsiya of the Republic of Belarus searched Mr. Losik’s apartment where he lived with his wife and six-month daughter.²⁰ During the search, Mr. Losik’s laptop, computer, and telephone were seized.²¹

At the time of the search, the reason for law enforcement actions were unknown. Although law enforcement produced a search warrant signed by the Prosecutor General’s Office of the Republic of Belarus, the warrant did not include a “name, department or no authorization visible.”²²

¹⁴ Radio Free Europe Radio Liberty. 2022. About Us. [online] Available at: <<https://pressroom.rferl.org/about-us>> [Accessed 8 December 2022].

¹⁵ Telegram. 2022. Belarus of The Mind. [online] Available at: <<https://t.me/belamova>> [Accessed 4 June 2022. Note: no longer accessible]. See also The Guardian. 2022. ‘Nobody can block it’: how the Telegram app fuels global protest. [online] Available at: <<https://www.theguardian.com/media/2020/nov/07/nobody-can-block-it-how-telegram-app-fuels-global-protest>> [Accessed 8 December 2022];

Radio Free Europe Radio Liberty. 2022. ‘The Dictator’s Revenge’: Who Are The Six Belarusians Sentenced To Major Prison Terms? [online] Available at: <<https://www.rferl.org/a/belarus-tsikhanouski-six-belarusians-sentenced/31611053.html>> [Accessed 8 December 2022].

¹⁶ Id.

¹⁷ Id.

¹⁸ Hawa Hiba (Belarusian Non-profit). 2015. One of the heroes of the year is blogger Igor Losik. [online] Available at: <<https://nashaniva.com/?c=ar&i=162308>> [Accessed 8 December 2022].

¹⁹ Radio Free Europe/Radio Liberty 2021 “Beyond winter, spring will surely come.” Igor Losik stopped his hunger strike. [online] Available at: <<https://www.svaboda.org/a/31068057.html>> [Accessed 8 December 2022].

²⁰ Source on file with author. Interview with anonymous source.

²¹ U.S. Agency for Global Media. 2022. USAGM calls on Belarusian authorities to release jailed RFE/RL consultant. [online] Available at: <<https://www.usagm.gov/2021/03/12/usagm-calls-on-belarusian-authorities-to-release-jailed-rfe-rl-consultant%e2%80%af/>> [Accessed 8 December 2022].

²² Source on file with author. Interview with anonymous source.

Additionally, neither Ms. Losik nor Mr. Losik were given a copy of the search warrant, were allowed to read it in its entirety, or take a copy or picture for later reference.²³

Immediately after the search, Mr. Losik was arrested and taken to a temporary detention facility at Akretina, Minsk.²⁴ Neither Ms. Losik nor Mr. Losik were presented with an arrest warrant or were informed of the reason for Mr. Losik's arrest.²⁵ Several hours after his arrest, they both learned a criminal case was opened against him under Article 342 of the Criminal Code of the Republic of Belarus for "organization of actions that grossly violate public order", which provides for a sentence of 3 years.²⁶ After the arrest, Mr. Losik was kept in a district pre-trial prison in Minsk.²⁷ Mr. Losik's arrest appears to be "preemptive", since at the time of the arrest, the police had no conclusive proof that Mr. Losik was posting in or associated with the Telegram channel "Belarus of the Brain" or that he had acted in any way that might have disrupted the public order. Instead, they allege that the government used this excuse to arrest Mr. Losik for his work as a journalist for REF/RL.²⁸

2. Trial and Conviction

On August 18, 2020, two months after his arrest, Mr. Losik was transferred to the pre-trial detention center in Zhodzino.²⁹ During that time Mr. Losik's was subject to physical and psychological violence. He was forced to get undressed and hold humiliating and uncomfortable positions for several hours at the time.³⁰ He was subject to arbitrary searches and transfers from one prison cell to another, including a basement cell with no toilet, light, ventilation, or room to sit or lay down and which he shared with 5 cellmates, 2 of which were severely sick and contagious.³¹ He was transferred from cell to cell with no warning or explanation.³² He was arbitrarily deprived from receiving letters, newspapers or any news or information, and prohibited from seeing his wife and daughter.³³ Moreover, all communication between Mr. Losik and all outside contacts was heavily monitored and redacted by the prison wardens.³⁴ Additionally, his wife reported that during this time, Mr. Losik was interviewed at least once a week where the authorities tried to make him confess to the charges he was accused of by making threats to himself and to his family.³⁵

²³ Source on file with author. Interview with anonymous source.

²⁴ Source on file with author. Interview with anonymous source.

²⁵ Source on file with author. Interview with anonymous source.

²⁶ Siarhei Tsikhanouski, Artsiom Sakau and Dzmitry Papou, all journalists and activists were similarly charges under article 293. Confirmed by AREFL, Belarusian Hajun project on Twitter (@MotolkoHelp). See also Radio Free Europe/Radio Liberty. 2022. *Belarusian Blogger Takes Hunger Strike Into Second Month Despite 'Worsening' Health*. [online] Available at: <<https://www.rferl.org/a/belarusian-blogger-takes-hunger-strike-into-second-month-despite-worsening-health/31046682.html>> [Accessed 8 December 2022]. <https://spring96.org/en/news/106069>.

²⁷ Source on file with author. Interview with anonymous source.

²⁸ Source on file with author. Interview with anonymous source: 'when they arrested him, they had nothing, they didn't know anything. They only knew he was a journalist'.

²⁹ *Igor Losik -- Political Prisoner*. [online] Available at: <<https://prisoners.spring96.org/ru/person/ihar-losik>> [Accessed 8 December 2022].

³⁰ Belsat.eu. 2022. *Ihar Losik writes about humiliation in Homiel detention center*. [online] Available at: <<https://belsat.eu/en/news/11-07-2021-ihar-losik-writes-about-humiliation-in-homiel-detention-center/>> [Accessed 8 December 2022].

³¹ Facebook. 2022. [online] Available at: <<https://www.facebook.com/prayforbelarus/videos/Darya-losik-wife-of-political-prisoner-igor-losik-tells-the-truth-about-his-dete/4674494735923854/>> [Accessed 8 December 2022].

³² Source on file with author. Interview with anonymous source.

³³ Belsat.eu. 2022. *From Igor Losik's last letter to his family, the censor left a blank postcard and a drawing*. [online] Available at: <<https://belsat.eu/en/news/22-04-2021-police-censor-ihar-losik-s-correspondence-from-jail/>> [Accessed 8 December 2022].

³⁴ Source on file with author. Interview with anonymous source.

³⁵ Facebook. 2022. [online] Available at: <<https://www.facebook.com/prayforbelarus/videos/Darya-losik-wife-of-political-prisoner-igor-losik-tells-the-truth-about-his-dete/4674494735923854/>> [Accessed 8 December 2022].

On December 15, 2020, a month after Mr. Losik had been held in an individual cell and prohibited from communicating with all outside sources, an additional charge was brought against Mr. Losik under Part 2 of Article 293 of the Criminal Code of the Republic of Belarus.³⁶ Article 293 punishes “the organization of mass disturbances.”³⁷ The combined charges under Articles 342 and 293-2 amounted to an 11-year sentence in a maximum-security colony.³⁸

In response to the additional charges brought against him, Mr. Losik started a hunger strike, claiming that it was the only remaining tool to “influence the unsubstantiated accusations and wrongful detention levied against him” as he posted on Belarus of the Brain’s Telegram.³⁹ Mr. Losik held his hunger strike until January 25, 2021, when he posted a statement on Telegram through Ms. Losik, that cited nationwide support and solidarity as the reason for which he ended his hunger strike.⁴⁰ Following the hunger strike, he was transferred to a cell with 24-hour video surveillance. The government claimed that Mr. Losik was periodically monitored by prison doctors and visited by prison psychologists.⁴¹ He was then transferred to the Homel pre-trial prison.⁴²

On February 18, 2021, in response to the arrest and sentencing of two other journalists, Mr. Losik wrote a letter, later published on Belarus of the Brain by Ms. Losik, where he revealed that the conditions of his detention in Homel were no better than the conditions that he withstood at Zhodzino.⁴³ The letter’s hopeless and defeated tone also sparked concerns about Mr. Losik’s mental and physical wellbeing among his supporters and family. On March 11, 2021, two new charges were brought against Mr. Losik under Articles 130 “incitement to racial, national or religious hatred or discord” and 138 “Illegal use of signs protected by international treaties” the former being considered a war crime.⁴⁴ These charges increased Mr. Losik’s possible sentence to 15 years.⁴⁵ When he was informed of the new charges, Mr. Losik attempted to injure his wrists in front of his lawyer and investigator and went on dry hunger strike for 6 days, after which he was placed in solitary confinement.⁴⁶ In April 2021, law enforcement censored all correspondence between Mr. Losik and all outside contacts.⁴⁷

In May 2021, the Prosecutor General's Office finalized the charges⁴⁸ against Mr. Losik and four other political prisoners: Siarhei Tsikhanouski, Mikalai Statkevich, Uladzimir Tsyhanovich, Artsiom Sakau, and Dzmitry Papour.⁴⁹ In addition to charging Mr. Losik under Articles 293 and

³⁶ Id.

³⁷ Source on file with author. Interview with anonymous source.

³⁸ Source on file with author. Interview with anonymous source.

³⁹ Telegram. 2022. *Belarus of The Mind*. [online] Available at: <<https://t.me/belamova>> [Accessed 4 June 2022, Note: no longer accessible].

⁴⁰ <https://www.svaboda.org/a/31068057.html>; <https://www.rferl.org/a/tsikhanouskaya-calls-jailed-belarusians-stop-hunger-strikes-losik/31151502.html> [Accessed 8 December 2022].

⁴¹ Source on file with author. Interview with anonymous source. *See also* "Beyond winter, spring will surely come." Igor Losik stopped his hunger strike, 2022.

⁴² Source on file with author. Interview with anonymous source.

⁴³ Telegram. 2022. *Belarus of The Mind*. [online] Available at: <<https://t.me/belamova>> [Accessed 4 June 2022, Note: no longer accessible].

⁴⁴ Derechos.org. n.d. *Equipo Nizkor - Domestic implementation of International Criminal Law for serious crimes: Republic of Belarus*. [online] Available at: <<https://www.derechos.org/intlaw/blr.html>> [Accessed 8 December 2022].

⁴⁵ Source on file with author. Interview with anonymous source.

⁴⁶ RadioFreeEurope/RadioLiberty. 2022. *Jailed Belarusian Blogger Ends Hunger Strike, Put In Solitary*. [online] Available at: <<https://www.rferl.org/a/jailed-belarus-blogger-ihar-losik-ends-hunger-strike-solitary-confinement/31153326.html>> [Accessed 8 December 2022].

⁴⁷ Belsat. Police censor Ihar Losik’s correspondence from Jail. 2021. Available at: <https://belsat.eu/en/news/22-04-2021-police-censor-ihar-losik-s-correspondence-from-jail/> [Accessed 8 December 2022].

⁴⁸ *Blogger Sergei Tikhonovsky faces final charges*. [online] Available at: <<https://sk.gov.by/en/news-en/view/blogger-sergei-tikhonovsky-faces-final-charges-10062/>> [Accessed 8 December 2022].

⁴⁹ The journalists were investigated/tried as a group but sentenced separately. *See also* Radio Free Europe/Radio Liberty. 2022. *Belarusian Blogger Takes Hunger Strike Into Second Month Despite 'Worsening' Health*. [online] Available at: <<https://www.rferl.org/a/belarusian-blogger-takes->

130 of the Criminal Code, the prosecutors requested that Mr. Losik and his codefendants be liable in the amount of 3.078 million rubles (\$ 1.2 million) for damages caused by their alleged crimes.⁵⁰ In June 2021, the trial began.

On December 14, 2021, six months after the trial had begun, Mr. Losik was found guilty and sentenced to 15 years under Articles 293 and 130 of the Criminal Code of the Republic of Belarus.⁵¹ The trial took place behind closed doors at the Homel Detention center, with Judge Dolya Nikolay presiding.⁵² Members of the press and the general public were not allowed to be present at any trial sessions. Family members were only allowed to be present in the last session, where the verdict was announced.⁵³ Mr. Losik has access to his lawyer, Dzimistry Lepratar, during his time in pre-trial detention and during the trial.⁵⁴ It appears as though Dzimistry had an opportunity to present a defense for Mr. Losik during trial, however this detail cannot be confirmed since Dzimistry signed a non-disclosure agreement that forbids him from disclosing the details of the case to anyone other than the prisoner.⁵⁵ A week after the trial, the Belarus's Interior Ministry added RFE/RL's Belarus Service to its registry of extremist organizations and restricted public access to RFE/RL's social networks and websites.⁵⁶

On June 1, 2022, the Belarus's Supreme Court rejected Mr. Losik's appeal led by Mr. Lepratar and upheld his 15-year sentence.⁵⁷ The trial was presided by a panel of three judges and held behind closed doors.⁵⁸ The names of the presiding judges were not disclosed to the public nor to Ms. Losik. However, all Supreme Court judges are appointed by the President, and it is common for the judges to rule in favor of the prosecution a majority of the time.⁵⁹

As a result of the Supreme Court decision, Mr. Losik was transferred from Homel to Novopolotsk IK No. 1, a high-level security correctional colony, where he is expected to serve the remainder of his sentence.⁶⁰ Since transferred to Novopolotsk, Mr. Losik has been subject to harsher and stricter measures. He can only receive visitors, other than his lawyer, twice a year.⁶¹ He is able to receive correspondence only once a month.⁶² Moreover, he is subject to lose "all rights and benefits" upon two violation of the jail's guidelines, which include unclean shaving and dressing inappropriately, and are enforced discretionarily by the police wardens working on the

hunger-strike-into-second-month-despite-worsening-health/31046682.html> [Accessed 8 December 2022]. *See also* Source on file with author. Interview with anonymous source; Source on file author. Conversation with the Belarusian Hajun project on Twitter (@MotolkoHelp).

⁵⁰ *Igor Losik -- Political Prisoner*. [online] Available at: <<https://prisoners.spring96.org/ru/person/ihar-losik>> [Accessed 8 December 2022]. *See also* Source on file with author. Conversation with Belarusian Hajun project on Twitter (@MotolkoHelp).

⁵¹ Originally the judge on the case was Nikolai Bakunov, judge of the Gomel Regional Court. However, on September 7, Lukashenka signed a decree appointing Bakunov to different cases, resulting in Mykola Dolya presiding over the case. There is little information in open sources about his judicial activities. <<https://spring96.org/ru/news/105094>> [Accessed 8 December 2022].

⁵² Facebook. 2022. [online] Available at: <<https://www.facebook.com/prayforbelarus/videos/Darya-losik-wife-of-political-prisoner-igor-losik-tells-the-truth-about-his-dete/4674494735923854/>> [Accessed 8 December 2022]; <<https://prisoners.spring96.org/ru/person/ihar-losik>> [Accessed 8 December 2022].

⁵³ Source on file with author. Interview with anonymous source.

⁵⁴ *Id.* *See also* Source on file with author. Interview with anonymous source.

⁵⁵ *Id.*

⁵⁶ <<https://www.svaboda.org/a/31622838.html>> [Accessed 8 December 2022].

⁵⁷ Source on file with author. Interview with anonymous source and <https://twitter.com/Tsihanouskaya/status/1532054013604433920> See also *Belarusian Supreme Court Upholds Harsh Sentences for Tsikhanouski, Losik, Four Others*. [Online] Available at: <<https://www.rferl.org/a/belarus-tsikhanouski-losik-sentences/31878851.html>> [Accessed 8 December 2022].

⁵⁸ Source on file with author. Interview with anonymous source.

⁵⁹ *Id.*

⁶⁰ <<https://prisoners.spring96.org/ru/person/ihar-losik>> [Accessed 8 December 2022]; Igor's address Penal colony No. 1. 211440, Navapolack, vulica Techničnaya 8.

⁶¹ Source on file with author. Interview anonymous source.

⁶² *Id.*

prison.⁶³ Currently, Mr. Losik has already been punished for unclean shaving.⁶⁴ Mr. Losik's specific release date, though during his verdict the judges stated that he would be released sometime in 2034 and that the time that Mr. Losik served in pre-trial detention will count towards his sentence.⁶⁵

There are growing concerns for both Mr. and Ms. Losik's health and well-being following Mr. Losik's transfer to Novopolotsk. On June 29, 2022, Mr. Losik was added to Belarus's terrorist watch list.⁶⁶ Mr. Losik has started another hunger strike and has expressed some suicidal thoughts in his last communications to Ms. Losik.⁶⁷ The government has started interrogating Ms. Losik at least once a month in relation to Mr. Losik's case and other cases, during which police officers have threatened with taking their child from Ms. Losik.⁶⁸

2. Legal Analysis

For the reasons set forth below, the arrest and detention of Igor Losik is arbitrary under Category I, Category II and Category III of the Working Group's Revised Methods of Work.⁶⁹

A. Arbitrary Deprivation of Liberty under Category I

A detention is arbitrary under Category I of the Working Group's Revised Methods of Work when it is impossible to invoke any legal basis justifying the deprivation of liberty.⁷⁰ In Mr. Losik's case, the Belarusian government had no legal basis on which to justify Mr. Losik's deprivation of liberty since June 25, 2020, due to the improper arrest procedures carried out by the Belarusian authorities and the lack of criminal offence committed by Mr. Losik.

1. Improper Arrest Procedures Carried out by Belarusian Authorities

Though there are no articles under the Constitution of the Republic of Belarus stating that an arrest warrant is a mandatory pre-condition to any lawful arrest, international law has clearly stated that a warrant is a necessary requirement before law enforcement agents can conduct an arrest.⁷¹ Article 9(2) of the International Covenant on Civil and Political Rights ("ICCPR") provides that "anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."⁷² Article 9 (1) also states that a warrant

⁶³ Id.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Radio Free Europe/Radio Liberty. 2022. *RFE/RL Condemns Ihar Losik's Addition to Terrorist Watch Registry*. [Online] Available at: <<https://pressroom.rferl.org/a/rferl-condemns-ihar-losik-s-addition-to-terrorist-watch-registry/31921362.html>> [Accessed 8 December 2022].

⁶⁷ Source on file with author. Interview with anonymous source. "In his letters he writes to me he "sees no point on continuing for 15 years when he could stop now."

⁶⁸ Source on file with author. Interview with anonymous source.

⁶⁹ Methods of Work of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/33/66 (hereinafter "Revised Methods of Work"), at ¶ 8b, https://digitallibrary.un.org/record/848575/files/A_HRC_33_66-EN.pdf. An arbitrary deprivation of liberty is defined as any "depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law." *International Covenant on Civil and Political Rights*, G.A. Res 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 999 UNT.S. 171, entered into force on Mar. 23, 1976 (hereinafter "ICCPR"), at art. 9(1), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁷⁰ Id.

⁷¹ Belarus's Constitution of 1994 with Amendments through 2004 https://www.constituteproject.org/constitution/Belarus_2004.pdf?lang=en

⁷² Opinion No. 52/2018 concerning Xiyue Wang (Islamic Republic of Iran), U.N. Doc. HRC/WGAD/2018/52 ¶ 27 (2017), https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session82/A_HRC_WGAD_2018_52.pdf.

establishes a legal basis for the arrest.⁷³ Moreover, previous opinions by the UN have stated that when local authorities fail to arrest and detain a person in accordance with international standard, the arrest and detention were unlawful.⁷⁴ Thus, the failure to show an arrest warrant and promptly inform a detainee of the charges against him demonstrates that there is no valid basis to justify the arrest and that the resulting deprivation of liberty falls within Category I of the Working Group.⁷⁵

Mr. Losik was neither shown an arrest warrant nor informed of the grounds for his arrest at the time of his arrest in June 2020. As a result, the Belarusian authorities failed to meet the standards of due process of law under international standards. Therefore, the deprivation of liberty which Mr. Losik has suffered has no legal basis on which it can be justified, which renders his detention arbitrary under Category I.

2. Lack of Criminal Offence Committed by Igor Losik

The Working Group has found that a detention has no legal basis when the detainee was arrested without substantive evidence to justify the arrest.⁷⁶ However, at the time of Mr. Losik's arrest, the government presented no evidence that Mr. Losik engaged in any activity to justify his detention. In Mr. Losik's case, by being a consultant to a media organization and posting on a Telegram channel, Mr. Losik was peacefully exercising his right to freedom of expression. Moreover, there is no direct evidence or any links showing that Mr. Losik's posts incited to actions during the August 2020 protests, particularly since he was arrested two months before the protests took place. Thus, there is no concrete basis in which Mr. Losik's arrest could be legally justified, and as a result, his detention falls within Category 1.

B. Arbitrary Deprivation of Liberty under Category II

A detention is arbitrary under Category II of the Working Group's revised Methods of Work when it results from the exercise of fundamental rights or freedoms protected under international law, including the rights to freedom of expression and freedom of association. In Mr. Losik's case, the government has violated both of these rights.

1. Belarus violated Mr. Losik's freedom of expression

Article 19 of the Universal Declaration of Human Rights ("UDHR") and Article 19(1) of the ICCPR provide for the right to freedom of opinion, including opinions of a political, scientific, historic, moral, or religious nature.⁷⁷ A State violates its obligations under Article 19(1) if it harasses, intimidates, or unlawfully detains an individual for holding a particular opinion. Article 19 of the UDHR and Article 19(2) of the ICCPR explicitly protect the right to express one's thoughts and opinions. Similarly, these articles protect the public's corresponding right to receive this information free from government interference or censorship.⁷⁸ Thus, the UDHR and ICCPR specially protect

⁷³ ICCPR, *supra* note 84, art. 18(3).

⁷⁴ *Id.*

⁷⁵ ICCPR note 84 art 18 (3).

⁷⁶ *Gargari v. Mexico*, UN Working Group on Arbitrary Detention, Opinion No. 58/2016, para. 21 (Nov. 25, 2016), <https://www.unwgadatabase.org/un/document.aspx?id=3283>.

⁷⁷ Article 19 of the ICCPR, *supra* note 4.

⁷⁸ *Id.*

the work of journalists, who must be allowed to gather information and disseminate news and ideas, which the ICCPR and UNHR are deemed as the “cornerstone of a democratic society”⁷⁹

Despite these protections under international law, the Belarusian government arbitrarily detained, on fabricated charges, Mr. Losik for exercising his right to freedom of expression. Mr. Losik’s charges were based on disrupting the public order and promoting national hate, both justifications that the government has used to jail journalists in the past. The flagrancy of these charges is evident considering the Belarusian government’s past conduct, its procedural violations at trial, but more importantly, by the fact that the government has not produced any evidence that links Mr. Losik’s articles or posts to the August 2020 protests.⁸⁰

Freedom of expression is not an absolute right under the ICCPR and may be subject to limited restrictions in certain circumstance. Under Article 19(3), such restrictions must be provided by law and must be necessary either to respect the rights and reputations of others or for the protection of national security, public order, or public health or morals. The Human Rights Committee (“HRC”) has interpreted the limited provisions of Article 19(3) narrowly, noting that the government must meet a “strict test of justification” and that any limitation must not jeopardize the right itself.⁸¹ Thus, this limitation does not allow the government to silence independent journalists who report on important issues, even if the government disapproves of the reporting. Here, the limitation does not apply. Mr. Losik’s articles and posts on Telegram only reported on and reflected the circumstances to which the Belarusian people are exposed by their government and his reporting did not conclusively or directly incite violence among the Belarusian population. Thus, the Belarusian government did not have a justification to limit Mr. Losik’s right to freedom of expression, and effectively violated this fundamental right. Because the government targeted Mr. Losik in response to his legitimate work as a journalist reporting on critical issues in Belarus, his imprisonment does not fall within the narrow exceptions of Article 19(3). As such, the continued imprisonment of Mr. Losik is a violation of Article 19(2) because it is the result of his peaceful free expression.

2. Belarus violated Mr. Losik’s freedom of association

Article 20 of the UDHR and Article 22 of the ICCPR provide for the right to freedom of association.⁸² It protects the right of individuals to associate with like-minded people or join groups to pursue a common interest and, it refers to the group’s right to form and carry out activities in accordance with its mission, including if this mission is political, social, cultural, religious, or commercial.⁸³ By targeting Mr. Losik because of his association with “Belarus of the Brain” and REF/RL, the Belarusian government violated Mr. Losik’s freedom of association.

Article 22(2) establishes standards that a State must meet to restrict freedom of association. Article 22(2) prohibits restrictions “other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order,

⁷⁹ General Comment No. 34, UN Human Rights Committee, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) *See also* Mavlonov v. Uzbekistan, UN Human Rights Committee, Communication No. 1334/2004 (Apr. 27, 2009).

⁸⁰ Though no evidence, investigation results or court documents disclosing the judges’ decision-making process have been disclosed to the public, the anonymous source has specified that during the one time the individual was able to read the court documents detailing Mr. Losik’s arrest, the government did not find any direct evidence of wrongdoing.

⁸¹ Velichkin v. Belarus, UN Human Rights Committee, Communication No. 1022/2001(May 9, 2001).

⁸² Article 21 of the ICCPR.

⁸³ *Id.*

the protection of public health or morals or the protection of the rights and freedoms of others.”⁸⁴ Despite using Belarusian domestic laws to justify its treatment of Mr. Losik, based on his work as a reporter on “extremist” organizations such as Belarus of the Brain and REF/RL, these exist in contravention of international law. As such, the Belarusian government cannot justify its violation of Mr. Losik’s rights under Article 22 of ICCPR.

C. Arbitrary Deprivation of Liberty Under Category III

A detention is arbitrary under Category III of the Working Group’s revised Methods of Work when it violates the prisoner’s due process or one of the tenants of the right to fair trial. The minimum international standards of due process are established in the ICCPR, the UDHR, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the United Nations Standard Minimum Rules for the Treatment of Prisoners.⁸⁵ Belarus has committed numerous violations of Mr. Losik’s rights under these standards.

1. Belarus violated Mr. Losik’s right to a fair hearing

A fair hearing may be described as a trial conducted by competent, independent, and impartial tribunal established by law.⁸⁶ Furthermore, fairness requires the absence of any direct or indirect influence, pressure, intimidation, or intrusion from any side and for whatever motive.⁸⁷ For example, a hearing is not fair or independent if the court openly supports one party over another or it is subject to political interference by the executive branch.⁸⁸

Currently, all federal and Supreme Court judges are appointed by the President and are subjected to significant pressure to rule in favor of the government, particularly on cases of political activists or opposition figures. The executive capture of the judiciary, in addition to the restrictions on Mr. Losik’s access to his attorney and his trial being held behind closed doors, meant that Mr. Losik was unable to have fair consideration of his case at trial. Consequently, by failing to hold Mr. Losik’s trial in an impartial court, the Belarusian government violated Mr. Losik’s right to a fair hearing.

2. The right to a public hearing

Article 14(1) of the ICCPR provides that everyone is entitled to a public hearing. The right to a public hearing means that an accused has the right to an open hearing attended by the public. In general, a hearing must be open to everyone, including members of the press, and relatives of the accused.⁸⁹ Courts are under an obligation to disclose information about the time and venue of the hearing and provide adequate time and facilities for attendance by interested members of the public.

Here, by holding his pre-trial hearing, trial, and appeal to the Supreme Court behind closed doors, prohibiting any presence from the press or family members and failing to disclose any court

⁸⁴ *Report of the Special Rapporteur on the Right to Freedom of Peaceful Assembly and of Association*, Maina Kiai, U.N. Doc. A/HRC/20/27 (May 21, 2012) at para. 24.

⁸⁵ General Comment No. 32, UN Human Rights Committee, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007).

⁸⁶ Article 21 of the ICCPR.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

documents or transcripts after the hearing, the Belarusian government violated Mr. Losik's right to a public hearing.

3. The right to assistance of legal counsel

Article 14(3)(b) of the ICCPR protects the right to have adequate time and facilities to prepare a defense and to communicate with a lawyer of one's own choosing.⁹⁰ Therefore, this right includes access to a qualified lawyer of one's choosing, the right to have sufficient time and facilities to communicate with a lawyer, and the lawyer's right to be free from intimidation, hindrance, and harassment from representing his client.⁹¹

While Mr. Losik was assigned a lawyer, Dzimitry Lepratar, that his Mr. Losik's family plans to continue to employ and he has had access to his services throughout his arrest, Mr. Lepratar has been subject to government intimidation, and hindrance for representing Mr. Losik. As with all attorneys in Belarus, Mr. Lepratar had to sign a non-disclosure agreement that prohibits him from disclosing any details of the case to anyone other than Mr. Losik, including Ms. Losik. Additionally, all meetings and correspondence between Mr. Losik and his lawyer are continuously monitored by law enforcement. Moreover, all Belarusian attorneys' licenses are managed by the executive branch; if an attorney presents a defense on behalf of his client that contradicts the executive branch's agenda, the government has been known to suspend their license, and in some cases, be subject to prosecution themselves. Therefore, in representing Mr. Losik, Mr. Lepratar is not only being hindered from representing his client efficiently, but he is also facing significant governmental intimidation. Thus, the Belarusian government has violated Mr. Losik's right to assistance of legal counsel.

4. The right to a prompt trial & release pending trial

Article 9(3) of the ICCPR provides that "anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power."⁹² The HRC has found that the ICCPR requires that criminal defendants are "entitled to trial within a reasonable time or to release."⁹³ Although the HRC has recognized that the reasonableness of trial delays must be assessed on a case-by-case basis, the government is obligated to provide justification for delaying a trial, particularly in cases where the defendant is held in pre-trial detention.⁹⁴ Moreover, the ICCPR and the HRC have established that pretrial detention should not be the general rule. Rather, unless the State can demonstrate that there is an extreme need to hold the person in captivity, a criminal defendant is entitled to pre-trial release.⁹⁵

Here, Mr. Losik was held in pre-trial detention for one year, without justification. The government failed to provide an explanation either for decision to hold Mr. Losik in pre-trial detention or for the delay in the trial at the first instance. Because he government has failed to provide such an explanation, the Belarusian government has violated Mr. Losik's right to be promptly brought before a judicial authority.

⁹⁰ General Comment No. 32, note 75. *See also* General Comment No. 13, UN Human Rights Committee, U.N. Doc. HRUI/GEN/1/Rev.1 at 14 (1994); Human Rights in the Administration of Justice, Chapter 7, "The Right to a Public Hearing."

⁹¹ *Id.*

⁹² Article 21 of the ICCPR

⁹³ General Comment No. 35, UN Human Rights Committee, U.N. Doc. CCPR/C/GC/34 (Dec. 16, 2014), para. 37.

⁹⁴ *Id.*

⁹⁵ *Id.* at para. 38.

V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN

On June 1, 2022, the Belarus Supreme Court rejected Mr. Losik's appeal led by Mr. Lepratar and upheld Mr. Losik's 15-year sentence.⁹⁶ The trial was presided by a panel of 3 judges and held behind closed doors.⁹⁷ Since then, Mr. Losik has been transferred to a high security prison.

VI. FULL NAME AND ADDRESS OF THE PERSON(S) SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE).

Adam Lhedmat
Freedom Now

Claudia Annacker
Andris Ivanovs
Navpreet Moonga
Stephanie Lee Han
Dechert LLP

Date: January 27, 2023

Signature: 

⁹⁶ Source on file with author. Interview with anonymous source and <https://twitter.com/Tsihanouskaya/status/1532054013604433920> See also *Belarusian Supreme Court Upholds Harsh Sentences for Tsikhanouski, Losik, Four Others*. [Online] Available at: <https://www.rferl.org/a/belarus-tsikhanouski-losik-sentences/31878851.html> [Accessed 8 December 2022].

⁹⁷ Source on file with author. Interview with anonymous source.